

No. 40

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**In the Supreme Court of the United States**

OCTOBER TERM, 1939

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THE UNION STOCK YARD AND TRANSIT COMPANY OF  
CHICAGO, APPELLANT

v.

THE UNITED STATES OF AMERICA, INTERSTATE COM-  
MERCE COMMISSION ET AL., APPELLEES

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APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

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BRIEF FOR THE UNITED STATES AND THE  
INTERSTATE COMMERCE COMMISSION

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## **OPINIONS BELOW**

No opinion was rendered by the specially-constituted District Court, but on March 9, 1939, its findings of fact and conclusions of law were entered (R. 116-119). The report of the Interstate Commerce Commission, upon which the challenged order is based (R. 22-56) is published in 227 I. C. C. 716.

## **JURISDICTION**

The final decree of the District Court was entered March 9, 1939 (R. 119). Petition for appeal

was filed April 7, 1939 (R. 141), and was allowed the same day (R. 154). The jurisdiction of this Court is founded upon the Urgent Deficiencies Act of October 22, 1931, c. 32, 38 Stat. 203, 219, 220 (U. S. C., Title 28, Secs. 45 and 47a, Supp. III) and Sec. 283 of the Judicial Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (U. S. C., Title 28, Sec. 345). This Court noted probable jurisdiction on May 22, 1939.

### QUESTIONS PRESENTED

In an Investigation and Suspension proceeding (Sec. 15 (7), Title I, Interstate Commerce Act) instituted upon protests of line-haul carriers entering Chicago, the Interstate Commerce Commission, following hearings, ordered appellant to cancel certain schedules in which appellant proposed to cancel its tariffs of charges for the unloading and loading of livestock and stated that "No tariffs of this company will be hereafter filed \* \* \*". The questions presented are:

1. Whether appellant, in the performance of the services covered by its tariffs, is a common carrier subject to the Interstate Commerce Act.
2. Whether the refusal of the Commission to receive evidence, alleged to be competent and material, was arbitrary and therefore, erroneous.

### STATUTES INVOLVED

The pertinent provisions of the Interstate Commerce Act are set forth in the Appendix.

## STATEMENT

This is a direct appeal from the final decree of a specially constituted District Court for the Northern District of Illinois dismissing a suit against the United States and the Interstate Commerce Commission, brought by appellant, The Union Stock Yard and Transit Company of Chicago, to enjoin and set aside an order of the Commission. The order was entered in Investigation and Suspension Docket No. 4296, *Cancellation of Livestock Services at Chicago*, 227 I. C. C. 716 (R. 22-56). Appellant Yard Company, which was first held to be a common carrier subject to the Act in *United States v. Union Stock Yards Co.*, 226 U. S. 286, and has continuously since had its tariffs on file naming its charges for the unloading and loading of livestock, on December 15, 1936, filed with the Commission a supplement, to become effective January 15, 1937, in which it undertook to cancel its tariffs, (R. 7), contending that it was no longer a common carrier subject to the Act.<sup>1</sup> Upon protests (R. 18) of trunk-line carriers entering Chicago, the Commission suspended the supplement and instituted the proceeding under section 15 (7) of the Act. Representatives of various livestock associations intervened in opposition to the schedules of the Yard Company (R. 24). The hearings were held in Washington, D. C., and Chicago, and a large record was made, consisting of testimony

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<sup>1</sup> Compare *Adams v. Mills*, 286 U. S. 397 at p. 413.

and exhibits. Brief and exceptions to the report proposed by the examiner were filed by the Yard Company, protestants replied thereto, and the parties were heard in oral argument (R. 22). On July 11, 1938, the Commission issued its report and order, requiring appellant Yard Company to cancel its supplement proposing cancellation of its tariffs. The same issues as to the Yard Company and its tariffs had been recently raised and considered in proceedings under section 15 (7) of the Act, and the same determination reached. Investigation and Suspension Docket No. 4109, *Livestock Loaded and Unloaded at Chicago*, 213 I. C. C. 330. The report in that proceeding is incorporated by reference (R. 26, 25) and made an appendix to the present report. (R. 28.)

The Yard Company was organized in 1865 under charter from the State of Illinois, granting it the power to build, own and operate a stockyards and railroad, and for the latter purposes to exercise the power of eminent domain (R. 29, 116). The charter provided, among other things, that

The said company shall construct a railway, with one or more tracks, as may be expedient, from the grounds which may be selected for its said yards, so as to connect, outside of the City of Chicago, the same with the tracks of all the railroads which terminate in Chicago, \* \* \* and shall have the right and power to make such connections with such suitable side tracks, switches

and connections as to enable all of the trains running upon said railroads easily and conveniently to approach the grounds selected for said yards, and may make such arrangements or contracts with such railroad companies, or either of them, for the use of any part or portion of the track or tracks of such company or companies, which now is or hereafter may be constructed, for the purposes aforesaid, as may be agreed upon between the parties; and shall have the power and authority to locate, and, from time to time, renovate, change, alter, construct, and reconstruct, and fully to finish and maintain its said railroad or roads, side tracks and connections, and to transport and allow to be transported thereon between said railroads and cattle yards, all cattle and live stock and persons accompanying the same, \* \* \*. (R. 29, 646, 647.)

Under this authority the Yard Company acquired real estate, constructed a stockyard and approximately 300 miles of railroad tracks, consisting of main lines, connecting with trunk lines entering Chicago, and switches to various industries located adjacent to its tracks. (R. 26, 117.) It "leased its railway property in 1897, and prior thereto it permitted individual trunk line railroads to transport livestock, with their own engines and crews over its railroad tracks, to and from the Stock Yards. Its 1897 lease was to Chicago and Indiana State Line Railway Company, retaining

for itself the loading and unloading platforms, chutes, pens and other facilities in its stock yard."

(R. 117, 338.) The lease was for a term of 50 years and for a rental of two-thirds of the profits from operation. In 1898 the lessee consolidated with another company which operated a belt line around the City of Chicago, the consolidated company becoming known as the Chicago Junction Railroad Company. In 1907 the Junction sold its belt line, retaining only those tracks and other railroad property leased from the Yard Company.

(R. 231.) It "granted" trackage rights to all the trunk line railroads entering Chicago, thus enabling such trunk lines with their own power to deliver livestock originating on their respective lines to the unloading platform of the Stock Yard Company."

(R. 30, 232, 293.) The Yard Company, with its own employees and its own facilities, platforms, chutes and pens, performed the unloading and loading. (R. 30, 34, 293, 238.) About 1907 the Chicago Junction Railway and Union Stock Yards Company, a New Jersey Holding Company was organized and acquired all the stock of the Junction and practically all the stock of the Yard Company. (R. 30, 232.)

*United States v. Union Stock Yards*, 226 U. S. 286, was rendered December 9, 1912, on appeal from a judgment of the Commerce Court in an action brought by the United States, at the request

of the Commission, to enjoin, *inter alia*,<sup>2</sup> the Yard Company and the Junction "from further engaging in interstate commerce until they had filed tariffs as required by section 6 of the Act." (295) The lower court had held that the Junction was a common carrier subject to the Act and obliged to file its tariffs, but that the Yard Company was not a common carrier. This Court's decision on appeal, which will be later discussed, was that the lower court was right in holding that the Junction should file its rates and that it should also have held the Yard Company subject to the provisions of the Act. Following the decision, the Yard Company filed with the Commission its tariffs of charges for the unloading and loading of livestock. (R. 233, 288.)

In December, 1913, shortly after the above decision the lease to the Junction made in 1897 was cancelled and a new one entered into, whereby the Yard Company's railroad properties, except those used for loading and unloading livestock, were leased in perpetuity to the Junction at an annual rental of \$600,000, in lieu of the two-third's share

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<sup>2</sup> The Bill also sought to compel the Yard Company and the Junction to file reports in conformity with section 20 of the Act, to enjoin them and Pfaelser & Sons from carrying out a contract, alleged to be discriminatory and to work a rebate, and to enjoin the New Jersey Holding Company from carrying out its written guaranty of the contract. 192 Fed. 380, 382.

in the net profits of operation theretofore received. In May, 1917, the Yard Company, by tariffs filed with the Commission, increased its carload charges for loading and unloading livestock from 25 and 50 cents to 50 and 75 cents, respectively. The line-haul carriers refused to absorb the extra charge of 25 cents with the result that it was exacted from shippers. (R. 31, 340.) Subsequently, the Yard Company filed with the Commission a supplement to be effective September 1, 1917, in which it undertook to cancel its tariffs, contending that, because of the changes in its lease to the Junction, it was no longer a common carrier. A suspension proceeding was instituted, but before decision was reached in that proceeding, a complaint was filed with the Commission by the Chicago Live Stock Exchange against the Yard Company and the line-haul carriers, alleging that the extra charge of 25 cents was exacted under an unreasonable practice (R. 31, 340). The two proceedings were consolidated and in its reports (*Live Stock Loading and Unloading Charges*, 52 I. C. C. 209, 58 I. C. C. 164) the Commission found that the Yard Company continued to be a common carrier subject to the Act, that its proposed cancellation of tariff charges had not been justified; that the stockyards were, in effect, the live stock terminals in Chicago of the line-haul carriers, the Junction and the Yard Company (p. 162); and that the extra charge had been exacted under an unreasonable and unlawful prac-

tice. Awards of reparation were made<sup>3</sup> and upheld in *Adams v. Mills*, 286 U. S. 397.<sup>4</sup>

Appellant Yard Company's contention in the Commission proceeding herein involved, that it is no longer a common carrier subject to the Act is based on further changes made in the leases of its railroad properties. On May 19, 1922, the Junction made a lease indenture, joined in by appellant, subleasing the railroad properties held by it under the lease from appellant, and leasing other property, to the Chicago River & Indiana Railway Company, hereinafter called the River Road, for a period of 99 years and thereafter, at the option of the lessee, in perpetuity. The indenture provided for an annual rental of \$2,000,000. All the capital stock of the River Road was at the same time acquired by the New York Central Railroad Company. Approval, with certain conditions imposed, of these transactions was granted by the Commission in the *Chicago Junction Case*, 71 I. C. C. 631, 150 I. C. C. 32.

This change in the lease status of the railroad properties occasioned no change in the services performed by the Yard Company in respect to the unloading and loading of livestock. This service, the Yard Company has always itself performed (R. 34,

<sup>3</sup> 100 I. C. C. 266; 144 I. C. C. 175.

<sup>4</sup> On certiorari from *Adams v. Mellon, Director General of Railroads and Union Stock Yard Co.*, 51 Fed. (2d) 620.

282), and since May 20, 1913, following this Court's decision in the *Union Stock Yards Case*, *supra*, under tariffs filed with the Commission.

Under the lease of May, 1922, to the River Road, the Yard Company covenanted that it would, when requested by the lessee and under the conditions specified, exercise in its own name and right, for the benefit of the lessee, its power of eminent domain granted in its special charter. (R. 667, 668.)

Meanwhile, paragraph (5) of section 15 of the Act was enacted February 28, 1920 (41 Stat. 486, sec. 418). It provided that "Transportation wholly by railroad of ordinary livestock in carload lots destined to or received at public stockyards shall include all necessary service of unloading and reloading enroute, delivery at public stockyards of inbound shipments into suitable pens and receipt and loading at such yards of outbound shipments, without extra charge therefor to the shipper, consignee or owner \* \* \*." The Packers and Stockyards Act, approved May 15, 1921 (42 Stat. 159), by which public stockyards are subjected to regulation, expressly provides (Sec. 226) that nothing in the Act shall affect the power or jurisdiction of the Commission nor confer upon the Secretary any concurrent jurisdiction over any matter within the jurisdiction of the Commission.

Pursuant to the regulatory processes of the Act, appellant's charge for unloading livestock has been

increased from 25 cents per car to its present level of \$1.25. *Live Stock Loading and Unloading Charges*, 58 I. C. C. 164, at p. 166; *Livestock Loading and Unloading*, 61 I. C. C. 223; *Loading and Unloading Livestock*, 83 I. C. C. 248.

#### THE PROCEEDINGS IN THE DISTRICT COURT

The case was heard by the three-judge court on February 20, 1939, on final hearing. The trunk-line railroads which were protestants against the Yard Company's proposed cancellation of its tariffs in the Commission proceeding and the National Live Stock Marketing Association intervened in support of the validity of the Commission's order. The only evidence introduced was that on behalf of the appellant Yard Company, consisting of a certified copy of the record before the Commission, a copy of the Commission's Rules of Practice and a copy of the Articles of Incorporation of the Chicago River and Indiana Railroad Company. (R. 158-159.)

Upon conclusion of oral argument, the court, after consideration, announced its decision to the effect that the services rendered by the Yard Company brought it within the jurisdiction of the Commission, under the provisions of the Act, and the order in question was valid and lawfully made. (R. 160.) No written opinion was rendered. Findings of fact and conclusions of law were filed March 9, 1939, and a decree entered the same day dismissing the complaint. (R. 119.)

## SUMMARY

1. Appellant, in the performance of unloading and loading of livestock at its public stockyards in Chicago, is a common carrier subject to the requirement of the Act to maintain on file with the Commission its tariffs of charges for such service. Sec. 6 (1) (7) and Sec. 15 (7), Interstate Commerce Act. Even confining consideration to the statute as it stood at the time of this Court's decision (*United States v. Union Stock Yard*, 226 U. S. 286), that appellant was a common carrier subject to the Act, the changes made in its leases have not divested it of its common carrier status. Appellant is unseverably affiliated with its demised railroad, constructed under its special charter to connect its yards with the line-haul carriers terminating in Chicago, in that each is dependent upon the other and both were established years ago in a city of rapid expansion and growth. Appellant's unloading and loading services, which by long usage, are a part of railroad transportation of livestock, constituting the commencement and termination thereof (*Union Stock Yard Case, supra*), is indispensable to the completion of every shipment of livestock transported over its demised railroad to and from its platforms.\* By

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\* See *U. S. v. Brooklyn Eastern Dist. Terminal*, 249 U. S. 296, in which this Court, speaking of the docks, warehouses, and car floats of that company, said that these "even if not under common ownership or management, are used as an integral part of each railroad line, like the stockyards in

long usage and custom at the Chicago yards, the rates of the line-haul carriers include the unloading and loading into suitable pens without extra charge to the shippers. While appellant is agent of the line-haul carriers in that the latter are required to absorb its charges, it has itself the status of common carrier whose charges are required to be filed and made subject to regulation. *Adams v. Mills*, 286 U. S. 397, 415. In this respect it is like a switching carrier whose services have to be employed by a line-haul carrier in order to serve industries which the latter alone reaches. Such switching carrier, while acting as agent, is subject to the Act as to those services and its charges therefor are subject to regulation. Similarly, appellant alone can be employed by the line-haul carriers for the service and it is necessarily distinguishable in that respect from various other agents performing services within the definition of railroad transportation. Appellant is performing an essential part of the common carrier transportation of each shipment of livestock and while doing so as agent in the sense that its charges have to be absorbed by the line-haul carriers, it is an agent, which itself has status of common carrier and as such is subject to regulation of its charges.

2. The amendment of 1920, adding Section 15 (5) to the Act, confirms appellant's status of com-

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*United States v. Union Stockyard Co.* 226 U. S. 286, and the wharfage facilities in *Southern Pacific Co. v. Interstate Commerce Commission*, 219 U. S. 498.

mon carrier in performing the unloading and loading of livestock. The amendment was enacted as a result of the controversy in *Adams v. Mills, supra*, and provided that "transportation wholly by railroad" of ordinary livestock destined to or received at public stockyards should include "all necessary service of \* \* \* delivery \* \* \* of inbound shipments into suitable pens and receipt and loading of outbound shipments, without extra charge therefor to the shipper, consignee or owner \* \* \*." The undoubted purpose was to bring under a single railroad rate the transportation of livestock including the unloading and loading into and from suitable pens, but, equally important, there was the underlying purpose to bring it about that the complete transportation charge should be subject to regulation of the Commission. In 1921, the Packers and Stockyards Act (42 Stat. 159) was enacted, subjecting public stockyards to regulation by the Secretary of Agriculture. This Act expressly provided (Sec. 226) that nothing therein should affect the power or jurisdiction of the Commission, nor confer upon the Secretary, any concurrent jurisdiction over any matter within the jurisdiction of the Interstate Commerce Commission. *A. T. & S. F. Ry. v. United States*, 295 U. S. 193, 201. *Denver Stock-Yard Co. v. United States*, 304 U. S. 470, 477. The situation then is this: That the railroad transportation of livestock includes the unloading and loading into and from suitable pens, without

extra charge to the shipper, which means that there must be a single rate and that appellant's charges for unloading or loading must be absorbed therein. As above said, appellant's demised railroad and its stockyards, both established years ago in a rapidly growing city are each dependent upon the other; and appellant's services of unloading and loading, necessarily unified to avoid congestion, constitute a part of railroad transportation, essential to the shipment of every carload of livestock to and from appellant's yards. As found by the lower court, there is no other way of unloading and loading livestock at appellant's yards. Appellant, while agent in performing such service, is itself a common carrier and its charges are subject to regulation. It is apparent that its charges are not like the expenses for fuel and other supplies spread over the field of a railroad's operations but are charges applying to each shipment, a component part of each rate, and obtainable only from appellant. Since they must be absorbed their level enters into the reasonableness of every rate on livestock. The Act's mandate that rates shall be reasonable has never been qualified nor the Commission's jurisdiction thereover. If it were true, as asserted by appellant, that the Secretary of Agriculture has jurisdiction over these charges. This would mean that a concurrent jurisdiction over the reasonableness of railroad rates had been conferred upon the Secretary

contrary to the saving clause in the Packers and Stockyards Act.

3. Appellant's contention that the Commission's refusal to permit their proffer of evidence in respect of other stockyards throughout the country was arbitrary, is clearly wrong. The Commission had before it a proceeding involving a particular public stockyards which, moreover, had had its charges on file since 1913 when it was declared by this Court to be a common carrier.

#### ARGUMENT

I. Appellant, in the performance of unloading and loading of livestock at its public stockyards, is a common carrier subject to the act

- (1) Appellant's status as a common carrier under the Act as it stood at the time of this Court's decision in *United States v. Union Stock Yard*, 226 U. S. 286, has not been divested by the changes in its leases

The decision of this Court, *United States v. Union Stock Yard*, 226 U. S. 286, that appellant is a common carrier subject to the Act, stands unchanged. In urging that it has divested itself of this status by the changes made in the leases of its railroad, appellant's argument is substantially: That the decision, holding it to be a common carrier, was dependent upon its affiliation with the Junction, in part because the lease of its railroad to the Junction was then on a profit rental basis and in part because of the common ownership of the capital stocks of both companies by the New Jersey Holding Company; that whereas the

Holding Company continues to own the capital stocks of appellant and the Junction, nevertheless, by reason of the lease of the railroad properties (except the unloading and loading facilities) made in 1922 by the Junction and appellant to the River Road, appellant's affiliation with its railroad had ceased; and in effect that, with the termination of such affiliation, its services of unloading and loading, ending and commencing transportation of livestock hauled by the line-haul carriers under trackage rights directly to and from its platform, had ceased to be common carriage subject to the Act and its requirement for the publication and filing of charges with the Commission.

While appellant's affiliation with the Junction was relied on in the *Stockyards Case, supra*, it is obvious that, if that were the only, or even the most important, consideration, the Holding Company might equally have been held to be a common carrier subject to the Act.\* Moreover, although appellant's affiliation is changed through the leases of its railroad, it is not terminated. Appellant is not affiliated with the present lessee of its railroad, the River Road, through ownership of the stock of the latter by the Holding Company, nor does it receive rental under the present lease on a profit sharing basis. But the two-third rental basis from the lease of its railroad (which was then to the Junction) was changed many years ago to a fixed

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\* *U. S. v. Union Stock Yard*, 226 U. S. 286, 296.

annual sum of \$600,000, this being done December 1, 1913, shortly after the decision in the *Stockyards Case, supra*. (R. 294, 682.) *Adams v. Mills*, 286 U. S. 397, 413. Under the existing lease of 1922 to the River Road the rental is \$2,000,000 per annum, payable quarterly to the Junction, except that the lessee is entitled to deduct therefrom and pay directly to appellant, on behalf of the Junction, the installments of rent as falling due under appellant's lease to the Junction of December 1, 1913, and supplements thereto (R. 658). Appellant is party to the lease, and is expressly included in many of its covenants.<sup>1</sup>

Appellant's view that there is here the usual affiliation of a lessor of a railroad with its lessee *and no more* is entirely wrong. Appellant exists by virtue of a special charter of the State of Illinois authorizing it to build and operate its stockyards, coupled with the mandate (R. 646) to construct a railroad adjunct thereto, that is, a railroad connecting its yards with all the railroads terminating in Chicago and for the principal uses of enabling transportation, either by itself or by the trunk lines, of shipments to and from its yards. Despite the fact that said railroad is "let or de-

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<sup>1</sup>Appellant's brief (p. 89) makes some point of the fact that its 1913 lease made in perpetuity to the Junction was without so-called "defeasance clause" and that Illinois Courts hold that such a lease is equivalent to conveyance of the fee, but this conflicts with the recitals and much else (R. 664) in the lease of 1922 to the River Road which was submitted to the Commission and approval, necessary to its validity, obtained.

mised", it remains dedicated to such uses, certainly in the absence of authority from the Commission which cannot be read into its approval of the 1922 lease, but quite to the contrary. In short, appellant's affiliation with its lessee is not that of a mere shell corporation lessor of a railroad. Appellant and users of its service remain entitled to, and dependent upon, its demised railroad, and its railroad and all transportation over it to appellant's platforms remain, in turn, dependent upon appellant. Appellant has retained to itself the rendering of, and furnishing facilities for, that part of the transportation consisting of the unloading and loading of the livestock. That service is a common carrier service of transportation by railroad, because it is made so by the Act (Sec. 1 (3)); because it is a service long recognized as constituting the commencement and completion of railroad transportation of livestock. (*Stockyards Case, supra*, 304; *Adams v. Mills*, 286 U. S. 397, 410); and because as found by the lower court (R. 118, finding 12) "there is no other way of unloading the stock from cars shipped to the Union Stock Yards except through the services furnished by plaintiff."

The full significance of this finding should be appreciated. Every carload shipment of livestock to and from appellant's platform is dependent upon its demised railroad, a railroad long ago established, in a city of rapid expansion and growth, to connect the trunk lines with appellant's yards, also long ago established. Appellant's un-

loading and loading services are essential and indispensable to the completion of the transportation of every such shipment. If done by the line-haul railroads it would be common carrier railroad service. As done by appellant, its charges being absorbed by the railroads under duty imposed by long custom and usage (*Adams v. Mills*, 286 U. S. 397, 413), there is no room for regarding appellant as other than a common carrier, while it is an agent of the line-haul carriers, it retains its status as a common carrier (*idem* 415). As stated in the Commission's report, referring to the analogy drawn in the last-mentioned case between appellant and a switching carrier (R. 42):

\* \* \* While a switching carrier, making delivery of a shipment to an industry located on its line, is agent of the line-haul carrier, its switching charge is subject to regulation. Under the conditions existing at Chicago respondent's yards are substantially the sole terminal in Chicago for the receipt of livestock and, as to the unloading of shipments destined to the yards, the railroads have to employ respondent to perform the service. Consequently the freedom of bargaining commonly entering into the creation of the usual relationship of principal and agent is not possible. Respondent is agent of the line-haul carriers precisely as is a switching carrier completing delivery for a line-haul carrier because it, too, is a common carrier whose charges are subject to regulation.

In the *Stockyards Case*, *supra*, p. 304, it was said:

"The transportation of live stock," said this Court in *Covington Stock-Yards Co. v. Keith*, 139 U. S. 128, 136, in treating of the duties of common carriers, irrespective of the Act to Regulate Commerce, "begins with their delivery to the carrier to be loaded upon its cars, and ends only after the stock is unloaded and delivered, or offered to be delivered, to the consignee."

The decision also referred to the fact that the services were railroad transportation services within the definition of Section 1 (3) of the Act (p. 308). That they are not performed as mere agent, without status of common carrier, is plain from what has just above been said. The decision also states, p. 305:

\* \* \* They (the Junction and appellant) are common carriers because they are made such by the terms of their charters, hold themselves out as such and constantly act in that capacity, and because they are so treated by the great railroad systems that use them.

In *Stafford v. Wallace*, 258 U. S. 495, this Court, referring to the Packers and Stockyards Act, said:

The act, therefore, treats the various stockyards of the country as great national public utilities to promote the flow of commerce from the ranges and farms of the West to the consumers in the East. It as-

sumes that they conduct a business affected by a public use of a national character and subject to national regulation. That it is a business within the power of regulation by legislative action needs no discussion. That has been settled since the case of *Munn v. Illinois*, 94 U. S. 113. *Nor is there any doubt that in the receipt of livestock by rail and in their delivery by rail the stockyards are an interstate commerce agency. United States v. Union Stock Yards Co.*, 226 U. S. 286.

While the Packers and Stockyards Act is legislation that will be later dealt with, it will be seen that the Court's conception of a public stockyards in connection with its reference to the *Stockyards Case*, *supra*, is wholly at variance with the narrow interpretation given that case by appellant.

In the *Tap Line Cases*, 234 U. S. 1, the Court, again citing its 1912 decision in the *Union Stock Yards Case*, said:

\* \* \* the extent to which a railroad is in fact used, does not determine the fact whether it is or is not a common carrier. *It is the right of the public to use the road's facilities and to demand service of it rather than the extent of its business which is the real criterion determinative of its character* (p. 24).

Furthermore, these roads are common carriers when tried by the test of organization for that purpose under competent legislation of the State. \* \* \* They are engaged

in carrying for hire the goods of those who see fit to employ them. They are authorized to exercise the right of eminent domain by the State of their incorporation. They were treated and dealt with as common carriers by connecting systems of other carriers, a circumstance to be noticed in determining their true character. *United States v. Union Stock Yard & Transit Co.*, 226 U. S. 286. They are engaged in transportation as that term is defined in the Commerce Act and described in decisions of this court (p. 26).

In *United States v. Brooklyn Eastern District Terminal*, 249 U. S. 296 (1919), the Court said:

The transportation performed by the railroads begins and ends at the Terminal. Its docks and warehouses are public freight stations of the railroads. These with its car floats, even if not under common ownership or management, are used as an integral part of each railroad line, like the stockyards in *United States v. Union Stock Yard Co.*, 226 U. S. 286, and the wharfage facilities in *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 U. S. 498. They are clearly unlike private plant facilities. Compare *Tap Line Cases*, 234 U. S. 1, 25. The services rendered by the Terminal are public in their nature; and of a kind ordinarily performed by a common carrier.

Appellant relies upon *Ellis v. Int. Com. Comm.*, 237 U. S. 434, in which the Court held a car com-

pany from which the railroads rented cars and received an icing service not to be subject to the Act. The difference between vital terminal services and a railroad's supplies is exactly the difference above referred to. The distinction between the two is emphasized by the statement in the *Ellis* case, as follows:

It is true that the definition of transportation in section 1 of the act includes such instrumentalities as the Armour Car Lines lets to the railroads. But the definition is a preliminary to a requirement that the carriers shall furnish them upon reasonable request. \* . \* (p. 443)

As the Court there states, the trunk line carriers may appropriately be charged with responsibility of providing necessary equipment and icing services. If they are unable to make satisfactory arrangements for such supplies or services with one agency they may do so with another, or they may supply the instrumentalities themselves. Wholly different is the situation as to the unloading and loading services at the Union Stock Yard, which by custom and usage are a part of railroad transportation, constituting the completion and commencement thereof and essentially has to be performed by appellant. Aside from the leases, there has been no change from the above to the present time. Something is said in appellant's brief to the effect that it does not control the movement of trains. . Nothing is conceivable that could

more affect and control train movements than the unloading and loading services which it performs. Appellant is not subject to criticism for insisting upon performing that part of the transportation itself. Unified performances by the Yard Company is, in the nature of things, an essential to prevent car and train congestion; and the very necessity for unified performance is another reason why appellant is an agent, which has status itself as carrier.

(2.) The amendment of 1920, adding section 15 (5) to the Act, confirms the status of appellant as a common carrier

It is well known that the amendment of 1920, adding Section 15 (5) to the Act (41 Stat. 486) was enacted as a result of the controversy which finally led to the decision in *Adams v. Mills, supra*, wherein charges for loading and unloading of livestock were sought to be assessed against the shippers in addition to the rates for the rail movement. (See Commission's Report, R. 37; also discussion in dissenting opinion of Mr. Justice Stone in *Atchison, T. & S. F. Ry. Co. v. United States, supra*, p. 207.) The purpose of this Act, passed before the Court's decision was made in *Adams v. Mills, supra*, was undoubtedly to bring under a single rail charge all services involved in the transportation of livestock up to and including the unloading into or the loading from pens but, as importantly, there was the underlying purpose to bring it about that the complete transportation charge should be subject to the Commission's

authority. This the Act accomplished by providing that "transportation wholly by railroad" of ordinary livestock destined to or received at public stockyards should include "all necessary service of \* \* \* delivery \* \* \* of inbound shipments into suitable pens and receipt and loading \* \* \* of outbound shipments, without extra charge therefor to the shipper, consignee or owner \* \* \*."

In providing that the services in question should be embraced in "transportation wholly by railroad", Congress studiously resorted to the exact language of Section 1 (1) of the Act wherein it had defined the sort of transportation which, when performed by a common carrier, sufficed to subject the service and the carrier performing the same to the Commission's jurisdiction.

This purpose of Congress to deal with the service of loading and unloading from and into railroad cars as an inseparable part of rail transportation is further indicated in the Packers and Stock Yards Act, approved in 1921 (42 Stat. 159, 7 U. S. C. 181-231), subjecting stockyards to regulation by the Secretary of Agriculture. This act expressly provided (Section 226) that nothing therein should affect the power or jurisdiction of the Commission, nor confer upon the Secretary any concurrent jurisdiction over any matter within the jurisdiction of the Interstate Commerce Commission.

This statutory purpose to maintain the Commission's jurisdiction over services which are an essen-

tial part of rail transportation has been recognized by this Court in *Atchison, T. & S. F. Ry. Co. v. United States*, *supra*, wherein the Court said (p. 201):

\* \* \* Usage and physical conditions combined definitely to end transportation, at least in respect of these shipments, with unloading into suitable pens as is now required by section 15 (5). Like the railroads, public stockyards are public utilities subject to regulation in respect of services and charges. The statutes cited clearly disclose intention that jurisdiction of the Secretary shall not overlap that of the Commission. The boundary is the place where transportation ends.

This purpose has been further recognized in *Denver Stock Yard Co. v. United States*, 304 U. S. 470, where the Secretary in valuing the property of a stockyard for the purpose of fixing charges for stockyard services was held to have properly omitted facilities used for loading and unloading livestock. The Court said (p. 477):

\* \* \* Appellant uses these facilities to unload and load livestock. That is a service for which the carriers pay appellant. Stockyard services do not commence until unloading ends; they end when loading begins. See *Atchison, T. & S. F. Ry. Co. v. United States*, 295 U. S. 193, 198. The court rightly refused to disturb the Secretary's ruling as to these facilities.

Appellant argues that it cannot be considered a "carrier" since, it says, the service involves no

carrying or transporting. Factually, of course, there is a movement of the commodity from the cars over or through especially provided facilities to the pens where delivery is made, or from the pens, in the case of loading. This movement, and the commodity during the movement, is under the control and responsibility of appellant which has assumed to perform the service. The means by which the transporting is accomplished and whether made without the use of vehicles seems unimportant. The movement is transportation in itself. As previously shown, loading and unloading of livestock at Chicago by long usage is an integral part of transportation and not merely a service connected with or incidental to it; and, more importantly for the purposes of this case, Congress with the remedial purpose of controlling the entire transportation charge to the shipper has expressly declared by Section 15 (5) that "transportation wholly by railroad" of livestock to or from public yards shall include these services. Appellant is thus engaged in the business of performing services which Congress has made an essential part of railroad transportation.

A very good statement of the principles properly applicable in such cases is made in 9 Am. Jur. Section 32, page 446, as follows:

Persons performing service of an accessorial or incidental nature in connection with the transportation of property may be regarded as occupying the status of a com-

mon carrier where such service involves the custody and control of the property and constitutes an essential part of the transportation. It is otherwise where the service in question is not in its nature an act of carriage or an essential part of the actual transportation, as has been held in the case of icing or refrigeration service.

That the stockyards are terminals of the railroads is recognized in many decisions, including *Adams v. Mills, supra*, (p. 409) where the Court said:

That the yards are, in effect, terminals of the railroads is clear. They are in fact used as terminals; and necessarily so.

The argument that appellant cannot be held to be a common carrier by railroad because factually it does not operate a railroad is thus without weight. Services which factually do not comprise the operation of a railroad are not infrequently dealt with as such in the scheme of regulatory legislation. Thus in *Claiborne-Annapolis Ferry v. United States*, 285 U. S. 382, the operation of a ferry was considered properly authorized by the Commission as constituting an extension of a line of railroad. In *McNamara v. Washington Terminal Company*, 37 App. D. C. 384, the Court said:

It is contended that the Washington Terminal does not own a car nor carry a passenger, and cannot therefore be held to be a common carrier. \* \* \* To make it a common carrier within the commerce

clause of the Constitution, it is not necessary that it should own a car or carry a passenger. \* \* \* Neither do we think it is necessary that a railroad should actually own cars in order to be a common carrier engaged in interstate commerce. It is sufficient if it owns and controls one of the instrumentalities essential in carrying on trade and commerce between different points, without the use and subjection to the control of which such trade and commerce cannot be conducted.

The loading and unloading service in question and the facilities necessary therefor are here provided by appellant. The charge therefor at so much per car is paid by the railroads and absorbed in the rail rates charged the shippers. The fact that appellant, in performing this service, is agent of the railroads does not in any sense import that appellant is not at the same time a common carrier.

In *Adams v. Mills*, *supra*, the Court, referring to the accepted status of appellant in that case as a common carrier said, at p. 415:

It did not follow from such status that it could not act as an agent of the line-haul carriers, nor that it was entitled to collect a part of its charges from the shippers. Compare *Missouri Pacific R. Co. v. Reynolds-Davis Grocery Co.*, 268 U. S. 366; *Union Stockyards Co. v. United States*, 169 Fed. 404, 406.

This analogy drawn in the above case between appellant's services and those of a carrier per-

forming switching service as agent for another, is an aid in emphasizing the most important feature of the case. For the Commission is by no means of the view (R. 39) that every corporation, performing as an agent for a railroad services which fall within the definition of transportation, thereby itself becomes a common carrier. By reason of natural causes appellant and its demised railroad are dependent the one on the other, and appellant's unloading and loading services are a part of and essential to the transportation of every shipment of livestock to and from the platforms, and its charges have to be absorbed in the rail rates of the line-haul carriers which by long usage, and now by statute, must include all transportation service in order that there be no extra charge to shippers in the sense that a single rate shall cover all. Yet there is no qualification, or ever has been, to the statute's mandate that rates shall be reasonable. *Atchison, T. & S. F. Ry. et al. v. United States*, 279 U. S. 768, 776, 777. Appellant, in performing the services for charges that have to be absorbed to make a single rate to shippers, has a monopoly of such service. And this is not meant as criticism, nor is any warranted. Under the conditions existing at the yards it is essential that the performance thereof be unified. The service is an essential part of transportation and appellant performs it as agent, itself having the status of common carrier, subject to regulation

of its charges. Because of its importance in the case the following is repeated from the Commission's report (R. 41-42):

\* \* \* This analogy, drawn between respondent's service and that of switching carrier, in completing a transportation is, we believe, particularly apposite here. Although a measure of competition exists between carriers, including switching carriers, one thing that made regulation of their charges necessary was that, in respect of a great deal of their service, competition was [fol. 53] absent. While a switching carrier, making delivery of a shipment to an industry located on its line, is agent of the line-haul carrier, its switching charge is subject to regulation. Under the conditions existing at Chicago respondent's yards are substantially the sole terminal in Chicago for the receipt of livestock, and, as to the unloading of shipments destined to the yards, the railroads have to employ respondent to perform the service. Consequently the freedom of bargaining commonly entering into the creation of the usual relationship of principal and agent is not possible. Respondent is agent of the line-haul carriers precisely as is a switching carrier completing delivery for a line-haul carrier because it, too, is a common carrier whose charges are subject to regulation.

Appellant's contention that its charges are in the category of expenses which are spread over the general operations of a carrier is plainly not

the case. They are charges applicable to each particular car handled and which enter directly into the cost to the carrier of completing the line haul which they undertake with respect to the delivery of any car of livestock. They are, in truth, charges applicable to a specific portion of the line haul. There can, of course, be no effective control of the entire line-haul rate in the interest of the shipper when an essential portion of the rate is not subject to control. To answer that the charges would be subject to regulation by the Secretary of Agriculture of course is the same as to contend that upon him is conferred concurrent regulatory power over the reasonableness of rates.

While the statutory purpose to maintain the Commission's authority to regulate all the components of the line-haul charge seems clear, it is not necessary for the purposes of this case to decide the full implication of Section 15 (5). The issue here is a narrow one. There is involved no question of the *quantum* of the charges for loading or unloading services; nor precisely where the transportation begins and ends. Neither is there any occasion to determine generally the status of stockyards organized and acting under different arrangements from those here presented. The single question is whether the appellant, in view of its particular status and of the service performed is bound to file its schedules of charges with the Commission.

## II. The Commission's refusal to receive the proffered testimony was not arbitrary or otherwise erroneous.

At the hearings before the Commission held in Washington (before a commissioner and an examiner, R. 226 et. seq.), counsel for the Yard Company indicated that they expected to present evidence; with respect to the conditions and methods of operation prevailing at each of the 136 publicly posted stockyards in the United States; with respect to the similarity of the organization and operation of some of these companies to that of the appellant; that some of them had divested themselves of any railroad interest and had cancelled their loading and unloading tariffs without interference by the Commission; that most of them had filed no tariffs with the Secretary of Agriculture for loading or unloading service, although a few had, and these without challenge by the Commission. The announced purpose of the evidence was to show "contemporaneous interpretation of the Interstate Commerce Act and the Packers and Stock Yards Act" by the Commission in such a way as to force "the conclusion that this particular yard under a like interpretation of the statutes is no longer a common carrier by railroad". (R. 267, 269.) Counsel indicated willingness to have the matter of the admissibility of this class of testimony determined at that time, although the witness who proposed to give the testimony was not then presented. (R. 264-265.) The effect of the

ruling of the commissioner was that counsel could go as fully as desired into the situation at the yard in question and could make a matter of record any decision or action of the Commission determining the status under the act of a stockyard, but that it would not be permitted to prove the conditions and the operations generally at other yards or to show instances of other yards which had escaped regulation by the Commission with respect to the filing of tariffs because of mere nonaction by the Commission. (R. 271, 272, 273.)

It appears that upon this ruling counsel indicated a purpose to present for the record as an offer of proof the evidence of the witness in the specific form in which the witness would present it if allowed to testify. (R. 273) Objection was made and sustained to an offer of proof in this form, it being made clear, however, that counsel could make the offer in his own way disclosing the character and effect of the matters offered. These rulings were adhered to in the subsequent hearings (held at Chicago before an examiner, R. 274) when the disputed evidence was physically offered, at which time it was made plain that the "specific evidence" would be excluded but that an offer containing an adequate statement of the purport of the testimony would be received. (R. 376, 381, 389)

It is contended that in the refusal to receive this evidence and in the further refusal to permit the

Yard Company to make its offer of proof in the form insisted upon, the Yard Company has been denied a fair hearing to which it is concededly entitled under the act.

With respect to the matter of the offer of proof, an examination of the record as already referred to (See also R. 276, 380, 381, 385-391) indicates clearly that counsel was permitted upon the sustaining of any objection to state in his own way the substance of what the witness would testify to. The only effect of the ruling apparently was to prevent counsel putting into the record as an offer of proof the complete and specific testimony and other evidence which under the ruling had been excluded as immaterial and irrelevant. (R. 376)

The appellant was clearly entitled to no more. The principle referred to by appellant and the cases cited to the point that an offer of proof is required to be specific and complete are hardly apposite. Of course a party complaining of the exclusion of an answer to a question is bound to show either by the question itself, or by an offer of proof as to what the response would be, that the evidence to be elicited would be relevant and material. To this extent it is required that the offer be specific. But there is certainly no rule that the party either must, or is entitled to, show in his offer the complete and detailed evidence. This is recognized in *Buckstaff v. Russell & Company*, 151 U. S. 626.

The record here is entirely adequate as a basis for determining the relevancy and materiality of the excluded evidence and this is all that is necessary, so far as the offer of proof is concerned.

With respect to the relevancy and materiality of the evidence offered as to conditions and methods of organization and operations at other yards, it may again be emphasized that the issue before the Commission was a narrow one as to whether this particular stockyard is a common carrier subject to the act, required to file tariffs showing its loading and unloading charges. It seems clear that this question of jurisdiction hinges entirely upon what is done at this particular yard and upon the pertinent facts as to the company's organization, and cannot be determined upon the basis of what situations prevail at other locations. The determination of appellant's status was made upon such considerations in the *Union Stock Yard case, supra*. Similarly, in *Adams v. Mills, supra*, the question whether the unloading in the yards was a part of transportation was determined upon a consideration of special conditions prevailing at the appellant's plant, the Court there saying (p. 409):

The decision of the question was dependent upon the determination of certain facts, including the history of the Stock Yards and their relation to the line-haul carriers; the history of the unloading charge at these yards; and the action of the parties in relation thereto.

It appears to be urged, however, that the evidence of conditions at the other yards was relevant as showing in some way an "administrative interpretation" that would govern in the present case. On the face of the record it appears that for more than 25 years the Commission has consistently dealt with the appellant as a common carrier subject to the act, and since 1922, upon the identical conditions as to lease arrangements and stock affiliation as now exist. Nothing in the proffered evidence therefore could tend to bring the appellant within the situation presented in *United States v. Chicago North Shore & Milwaukee R. R. Co.*, 288 U. S. 1, where this Court held that the long-continued treatment by the Commission of a particular carrier as not subject to certain provisions of the act was, in the special circumstances presented, entitled to great weight.

Nor can it be seen that the evidence, taken at its best, could tend to establish a rule of law as to the status of stockyards operating under conditions similar to those here presented. In the face of the long history of the present controversy, the several decisions of the Commission with respect to it and the litigation involved, the evidence could not in any circumstances tend to show a "long continued" or a uniform or "settled" administrative practice with respect to the status of such companies within the familiar rule governing the construction of "doubtful" statutes. *United*

*States v. Moore*, 95 U. S. 760, 763; *Logan v. Davis*, 233 U. S. 613, 627; *Brewster v. Gage*, 280 U. S. 327, 336; *Fawcus Machine Company v. United States*, 282 U. S. 375, 378; *Interstate Commerce Commission v. New York, N. H. & H. R. Co.*, 287 U. S. 178, 190.

But more importantly it is clear that the proffered evidence did not go to any action of the Commission which purported to show a decision or ruling of the Commission with respect to any of these yards. Apparently the most that the evidence would have tended to show was that among the other stockyards of the country were some which, said to be organized and functioning similarly to appellant, had succeeded in cancelling their schedules for loading and unloading without protest by any interested party or any formal action or decision by the Commission. While it may be that nonaction in some circumstances may constitute a sufficient basis for applying the principle of settled administrative interpretation, it is earnestly urged that the application of such principles to evidence of the character here concerned would be most unfortunate and improper. The filing of a schedule with the Commission instituting or cancelling a tariff does not of itself require any determination by the Commission as to the lawfulness under the act of such schedule. In the absence of some protest or complaint or of some apparent cause for an investigation on the

Commission's own motion, such schedules are filed upon representations made by the publishing party as a matter of course so long as they meet the Commission's requirements as to form. The Commission's power under Section 15 (7) to suspend a schedule clearly does not imply a decision as to whether or not an unprotested schedule allowed to become effective is lawful. Especially in respect to questions of jurisdiction would it be unfortunate to decide each such question upon collateral issues going to the number of other carriers of similar kind which had escaped jurisdiction for whatever reason. The admission of such evidence would apparently result in a general survey, in each such case, of all other situations of a similar kind with the thought of giving weight in a sort of head-counting process to the number of carriers which had or had not, under such conditions, been brought under the Commission's jurisdiction.

It is also urged as indicating the relevancy of the excluded evidence that the appellant was entitled to show that the remedial purpose of section 15 (5) could be accomplished without subjecting any stockyard to regulation by the Commission as to its unloading and loading charges. This it proposed to show in part by proving that the carriers and many stockyards had harmoniously agreed upon these charges without occasioning any increase in the line-haul rates and without filing the schedules with any authority. The effect of this

argument, however, is only to assert that no one need have authority to regulate these charges and this is contrary to the appellant's own contention previously made that it is the Secretary of Agriculture who has such authority in all cases. Such evidence would have been competent before Congress in urging that no regulatory legislation was necessary in the first place. It seems hardly relevant as proof that Congress intended no one to regulate the charges. The appellant also proposed to support its premise in this respect by showing that other yards have included their unloading and loading charges in their schedules, filed with the Secretary and, presumably, that the remedial purpose of section 15 (5) will be duly accomplished through his regulation of the charges. It does not follow, however, by reason of the inclusion of such charges in schedules filed with the Secretary that he has assumed to regulate them. The decision in *Denver Stock Yard Company v. United States*, *supra*, would appear to be conclusive of a contrary purpose. Moreover, the inclusion of such charges in schedules filed with the Secretary without some formal action by him approving this practice could hardly constitute a practical construction of the act by him in favor of his power of regulation; and certainly such inclusion would not be evidence of a practical construction of the act by the Commission.

But in any event, section 15 (5) clearly did not stop with the expression by Congress of a remedial purpose, leaving the manner of execution of the purpose for future determination; it provided at the same time a remedy, namely the inclusion of the charges as a part of the line-haul transportation for the purpose of regulation of the entire charge by the Commission. Until the Packers and Stock Yards Act was passed in 1921, there could of course be no contention that any other authority than the Commission was given jurisdiction over these charges, and the Packers and Stock Yards Act, as already shown, was carefully drawn not to overlap any jurisdiction previously conferred upon the Commission. In view of the plain terms of the statutes and of the decisions of this Court thereon, it could hardly be considered that there is involved any question of doubtful statutory construction in this respect justifying resort to a practical construction of the Act for its solution.

Appellant urges a number of other grounds for the reception of the excluded evidence, most of which, however, appear to go to the question of the necessity for any regulation by the Commission of these charges, or to the point that the charges are stockyard charges in character rather than transportation charges. These arguments on their face go more to the question of the desirability of the legislation than to the construction of the statutes. In this aspect the evidence would appear to be clearly irrelevant.

**CONCLUSION**

It is respectfully submitted that the decree of the lower court denying the prayer of and dismissing the bill should be affirmed.

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## APPENDIX

### *Pertinent provisions of the Interstate Commerce Act*

Sec. 1. [As amended June 29, 1906, April 13, 1908, June 18, 1910, May 29, 1917, August 10, 1917, February 28, 1920, June 19, 1934, and August 9, 1935.] [U. S. Code, title 49, sec. 1.]

(1) That the provisions of this part shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment.

(3) The term "common carrier" as used in this part shall include all pipe-line companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire. Wherever the word "carrier" is used in this part it shall be held to mean "common carrier." The term "railroad" as used in this part shall include all bridges, car floats, lighters, and ferries used by or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property desig-

nated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property. The term "transportation" as used in this part shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported.

SEC. 6. (1) That every common carrier subject to the provisions of this part shall file with the Commission created by this part and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print, and keep open to public inspection as aforesaid, the separately established rates, fares, and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regula-

fions which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facilities defined in this part.

(7) No carrier, unless otherwise provided by this part, shall engage or participate in the transportation of passengers or property, as defined in this part, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this part; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs.

SEC. 15. (5) Transportation wholly by railroad of ordinary livestock in carload lots destined to or received at public stockyards shall include all necessary service of unloading and reloading en route, delivery at public stockyards of inbound shipments into suitable pens, and receipt and loading at such yards of outbound shipments, without extra charge therefor to the shipper, consignee or owner, except in cases where the unloading or reloading en route is at the request of the shipper, consignee or owner, or to try an intermediate market, or to comply with quarantine regulations. The Commission may prescribe or approve just and reasonable rules governing each of such excepted services. Nothing in this paragraph shall be construed to affect the duties and liabilities of the carriers now existing by virtue of law respecting the transportation of other than ordinary livestock, or the duty of performing service as to shipments other than those to or from public stockyards.

(7) Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon

the Commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of property, the Commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified.